

CLOSED, ECF

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:07-cv-07481-RJS**

The New York Times Company et al v. United States
Department of Defense et al
Assigned to: Judge Richard J. Sullivan
Cause: 05:552 Freedom of Information Act

Date Filed: 08/23/2007
Date Terminated: 11/05/2008
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff**The New York Times Company**

represented by **David Edward McCraw**
The New York Times Company
620 8th Avenue
New York, NY 10018
(212) 556-4031
Fax: (212) 556-4634
Email: mccrad@nytimes.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff**Paul Von Zielbauer**

represented by **David Edward McCraw**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**United States Department of Defense**

represented by **Lara K. Eshkenazi**
U.S. Attorney's Office, SDNY (86
Chambers St.)
86 Chambers Street
New York, NY 10007
212-637-2758
Fax: 212-637-2730
Email: Lara.Eshkenazi@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Department of the Army
TERMINATED: 04/03/2008

represented by **Lara K. Eshkenazi**
(See above for address)
LEAD ATTORNEY

Date Filed	#	Docket Text
08/23/2007	<u>1</u>	COMPLAINT against United States Department of Defense, Department of the Army. (Filing Fee \$ 350.00, Receipt Number 625263) Document filed by The New York Times Company, Paul Von Zielbauer.(laq) Additional attachment(s) added on 8/27/2007 (Rodriguez, Tiffany). (Entered: 08/27/2007)
08/23/2007		SUMMONS ISSUED as to United States Department of Defense, Department of the Army. (laq) (Entered: 08/27/2007)
08/23/2007	<u>2</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by The New York Times Company, Paul Von Zielbauer.(laq)

		Additional attachment(s) added on 8/27/2007 (Rodriguez, Tiffany). (Entered: 08/27/2007)
08/23/2007		Magistrate Judge Andrew J. Peck is so designated. (laq) (Entered: 08/27/2007)
08/23/2007		Case Designated ECF. (laq) (Entered: 08/27/2007)
09/06/2007	<u>3</u>	NOTICE OF APPEARANCE by Lara K. Eshkenazi on behalf of United States Department of Defense, Department of the Army (Eshkenazi, Lara) (Entered: 09/06/2007)
09/12/2007	<u>4</u>	CERTIFICATE OF SERVICE of Summons and Complaint,. United States Department of Defense served on 8/29/2007, answer due 10/29/2007; Department of the Army served on 8/29/2007, answer due 10/29/2007. Service was made by Mail. Document filed by The New York Times Company; Paul Von Zielbauer. (McCraw, David) (Entered: 09/12/2007)
09/17/2007	<u>5</u>	AMENDED COMPLAINT amending <u>1</u> Complaint, against United States Department of Defense, Department of the Army. Document filed by The New York Times Company, Paul Von Zielbauer. Related document: <u>1</u> Complaint, filed by The New York Times Company, Paul Von Zielbauer. (jco) (Entered: 09/19/2007)
09/27/2007	<u>6</u>	ENDORSED LETTER addressed to Judge Richard J. Sullivan from Lara K. Eshkenazi dated 9/25/07 re: Counsel for defendants request an extension of time until 10/19/07, to answer, move or otherwise respond to the First Amended Complaint. ENDORSEMENT: SO ORDERED. United States Department of Defense answer due 10/19/2007; Department of the Army answer due 10/19/2007. (Signed by Judge Richard J. Sullivan on 9/26/07) (tro) (Entered: 09/27/2007)
10/19/2007	<u>7</u>	ENDORSED LETTER addressed to Judge Richard J. Sullivan from Lara K. Eshkenazi dated 10/17/07 re: Counsel for defendants United States Department of Defense and United States Department of Army to request a six-day extension of time, from 10/19/07 until 10/25/07, to answer, move or otherwise respond to the First Amended Complaint. ENDORSEMENT: SO ORDERED. United States Department of Defense answer due 10/25/2007; Department of the Army answer due 10/25/2007. (Signed by Judge Richard J. Sullivan on 10/18/07) (tro) (Entered: 10/19/2007)
10/25/2007	<u>8</u>	ANSWER to Amended Complaint. Document filed by United States Department of Defense, Department of the Army. Related document: <u>5</u> Amended Complaint, filed by The New York Times Company, Paul Von Zielbauer.(Eshkenazi, Lara) (Entered: 10/25/2007)
11/05/2007	<u>9</u>	ORDER: Pre-Motion Conference set for 11/15/2007 at 4:00 PM in Courtroom 21C, 500 Pearl Street, New York, NY 10007 before Judge Richard J. Sullivan. Pursuant to the parties' joint request, the deadlines set forth in defendants' 10/31/2007 letter are hereby adopted by the Court. Defendants' shall respond to the FOIA requests in Count III, save for the request for the production of emails, by 11/14/2007. Defendant shall respond to the request for the production of emails in Count III by 12/3/2007. (Signed by Judge Richard J. Sullivan on 11/2/07) (kco) (Entered: 11/05/2007)
11/06/2007	<u>10</u>	AMENDED ORDER: pursuant to the parties' joint request, the deadlines set forth in defendants' 10/31/2007 letter are hereby adopted by the Court. Defendants' shall provide an update regarding their progress in responding to the email portion of plaintiffs' requests in Count III by 11/14/2007. Defendants shall complete their response to plaintiffs' remaining requests in Count III by 12/3/2007. (Signed by Judge Richard J. Sullivan on 11/5/07) (kco) (Entered: 11/06/2007)
11/15/2007	<u>11</u>	ENDORSED LETTER addressed to Judge Richard J. Sullivan from Lara K. Eshkenazi dated 11/14/2007 re: with the consent of opposing counsel, the Government respectfully requests until January 3, 2008, to respond to the email request. ENDORSEMENT: SO ORDERED. (Signed by Judge Richard J. Sullivan on 11/14/2007) (jmi) (Entered: 11/15/2007)
11/19/2007	<u>12</u>	ORDER: Regarding the parties' proposed cross-motions for summary judgment as to Count II of the Amended Complaint, the Court adopts the following briefing

		schedule: Respective moving papers submitted by 12/12/2007. Respective opposition papers submitted by 1/16/2008. The Court will schedule oral argument regarding the cross-motions at a later date, if necessary. (Signed by Judge Richard J. Sullivan on 11/16/2007) (jar) (Entered: 11/19/2007)
12/13/2007	<u>13</u>	ENDORSED LETTER addressed to Judge Richard J. Sullivan from Lara K. Eshkenazi dated 12/12/2007 re: I write respectfully on behalf of both parties in the above-reference case to request a one-week extension of time from December 12, 2007 to December 19, 2007, for parties to submit summary judgment motions with respect to Court II of the complaint. ENDORSEMENT: As requested summary judgment motions are to be file by December 19, 2007. SO ORDERED. (Motions due by 12/19/2007.) (Signed by Judge Richard J. Sullivan on 12/13/2007) (jmi) (Entered: 12/13/2007)
12/14/2007	<u>14</u>	STIPULATION AND ORDER the terms of the Stipulation and Order apply only to the FOIA request at issue in this case and have no legal significance with respect to any other FOIA request. Each party shall bear its own costs and attorney's fees to date with respect to plaintiff's claims regarding the FOIA request. (Signed by Judge Richard J. Sullivan on 12/12/2007) (jmi) (Entered: 12/14/2007)
02/04/2008	<u>15</u>	ORDER Defendants shall produce all documents relating to non-email requests in Count III of the complaint by 2/11/08. In addition, on that date, defendants shall produce affidavits or declarations establishing that they conducted an adequate search for the requested documents. See Perry v. Block, 684 F. 2d 121, 127 (D.C. Cir. 1982). Defendants shall produce all materials relating to the requests for emails in Count III of the complaint by 2/18/08. Thereafter, the Court shall schedule further proceedings in this action, if necessary. So Ordered. (Signed by Judge Richard J. Sullivan on 2/1/08) (jco) (Entered: 02/04/2008)
02/19/2008	<u>16</u>	ENDORSED LETTER addressed to Judge Richard J. Sullivan from Lara K. Eshkenazi dated 2/13/08 re: Counsel for Defendants write to update the Court on the status of the Government's response to the Freedom of Information Act request of the New York Times for records related to DOD's communications with certain analysis, and to request an extension of time to produce additional emails. DOD expects to be able to produce any responsive emails from the account by 2/25/08. Finally, after further discussions between DOD and plaintiff, DOD has agreed to produce a Vaughn Index to plaintiff by 3/17/08. ENDORSEMENT: The proposed schedule set forth in this letter are hereby ADOPTED by the Court. The parties shall submit a joint status letter concerning this matter no later than March 24, 2008. (Status Report due by 3/24/2008.) (Signed by Judge Richard J. Sullivan on 2/19/08) (tro) (Entered: 02/19/2008)
02/26/2008	17	TRANSCRIPT of proceedings held on 2/1/2008 before Judge Richard J. Sullivan. (wb) (Entered: 02/26/2008)
03/18/2008	<u>18</u>	ENDORSED LETTER addressed to Judge Richard J. Sullivan from Lara K. Eshkenazi dated 3/14/08 re: Counsel for defendants U.S. Dept. of Defense and U.S. Dept. of the Army to update the Court on the status of the Government's response to the Freedom of Information Act request of the New York Times for records related to DOD's communication with certain military analysts, and to request an extension of time to produce additional emails from the accounts of twelve individuals employed in DOD's Office of the Executive Secretariat. If additional time is needed, the Government will update the Court on the status of the remaining emails on 3/24/08. ENDORSEMENT: SO ORDERED. (Status Report due by 3/24/2008.) (Signed by Judge Richard J. Sullivan on 3/17/08) (tro) (Entered: 03/18/2008)
03/25/2008	<u>19</u>	ENDORSED LETTER addressed to Judge Richard J. Sullivan from Lara K. Eshkenazi dated 3/24/2008 re: Pursuant to the Court's order dated February 19, 2008, I write respectfully on behalf of both parties to update the Court on the status of the Government's response to the Freedom of Information Act request of the New York Times for records related to the United States Department of Defense's communications with certain military analysts. At the request of the New York Times, DOD is also in the process of searching the email accounts of a few employees whose responsibilities including procurement. DOD experts to complete its search of e-mails of the Office of the Joint Chiefs of Staff and to produce

		responsive documents, if any, by March 31, 2008. DOD will complete the remainder of searches described in this paragraph and produce responsive documents, if any, as soon as possible, but in any event, no later than April 14, 2008. ENDORSEMENT: Request granted. The parties shall submit a joint status letter regarding the progress of the searches referenced herein no later than April 18, 2008. SO ORDERED. (Signed by Judge Richard J. Sullivan on 3/25/2008) (jmi) (Entered: 03/26/2008)
04/03/2008	<u>20</u>	STIPULATION AND ORDER OF DISMISSAL: the above-captioned action is hereby dismissed, with prejudice, as against the Department of the Army. (Signed by Judge Richard J. Sullivan on 4/3/08) (tro) (Entered: 04/04/2008)
04/16/2008	<u>21</u>	ORDER: The parties shall appear for a Conference on 4/17/2008 at 02:30 PM in Courtroom 21C, 500 Pearl Street, New York, NY 10007 before Judge Richard J. Sullivan, in order to address defendant's failure to abide by the deadline previously set by this Court for its response to plaintiffs' FOIA requests. (Signed by Judge Richard J. Sullivan on 4/16/08) (tro) (Entered: 04/16/2008)
04/17/2008	<u>22</u>	ORDER: IT IS HEREBY ORDERED that defendants shall produce to plaintiffs the following categories of documents by the date provided: The Central Command documents shall be produced by 5:00 p.m. on April 17, 2008. The Executive Secretary documents shall be produced by 5:00 p.m. on April 21, 2008. The Public Affairs documents shall be produced by 5:00 p.m. on April 23, 2008. The Procurement documents shall be produced by 5:00 p.m. on April 30, 2008. These deadlines should be strictly observed by defendants. The Court will not entertain further requests for extensions of time to produce these documents. Moreover, in the event that defendant fails to comply with this Order, the Court may impose sanctions on defendant and/or the individuals responsible for defendant's non-compliance. (Signed by Judge Richard J. Sullivan on 4/17/08) (tro) Modified on 4/28/2008 (tro). (Entered: 04/18/2008)
04/30/2008	23	TRANSCRIPT of proceedings held on 4/17/08 before Judge Richard J. Sullivan. (ama) (Entered: 04/30/2008)
11/05/2008	<u>24</u>	ORDER: This action is dismissed with prejudice but without costs; provided, however, that within thirty days of the date of this Order, any party may apply by letter for restoration of this action to the calendar of the undersigned, in which event the action will be restored. (Signed by Judge Richard J. Sullivan on 11/4/08) (tro) (Entered: 11/05/2008)
11/05/2008	<u>25</u>	STIPULATION AND ORDER OF DISMISSAL: this action is hereby dismissed with prejudice. (Signed by Judge Richard J. Sullivan on 11/5/08) (tro) (Entered: 11/05/2008)